IN THE UNITED STATES DISTRICT COURT
IN THE DISTRICT OF KANSAS

MATTHEW ESCALANTE )
Plaintiff )
)
vs. )
)
PAUL BURMASTER )
Defendant )

Case No. 2:23-CV-2559

MOTION FOR RELIEF OF JUDGEMENT PURSUANT RULE 60b AND RULE 19 OF FRCP

Comes now, Plaintiff Matthew Escalante, by and through his own counsel and in reliance to FRCP 60b, Relief from Judgement or Order and also Rule 59 New Trial; and Rule 19 Required Joinder but Rule 60 (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reason Rule 59 of Federal Rules of Civil Procedure state (a)(1) mistake, inadvertence, surprise, or excusable neglect (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief: The Plaintiff states the following of Fact surrounding parties in this State in the last 22 days of the 25 days allowed in which at minimum similar Rule 59 permits, the Rule 60B grants one year however to show these following facts:

1. A mistake, or excusable neglect is found both in the High Court and with the Plaintiff regarding the day of Judgement/Order in this case of 2:23-CV02559 Escalante vs Burmaster. The case was dismissed by Order Doc 15 and 16 on January 25th 2024.

    a. The High Court has errored in document 15, Memorandum and Order on Jan 25, 2024, when it stated, "Plaintiff is barred from Relitigating the Question of Judicial Immunity of the defendant and this action is dismissed as it is frivilous. This judicial statement showing in docket entry written by Honorable Judge John Broomes. This is spoken over a 5 page order doc 15.

    b. Irrelevant from any statement in page 1 and 2, respectfully said is one core paragraph on page 3 that identifies purported reasons for dismissal of 2:23-CV-2559 by the High Court in when it stated: Plaintiff is proceeding pro se and in forma pauperis.1 When a party is granted leave to proceed in forma pauperis, § 1915(e)(2) permits the court to screen the party's complaint. The court must dismiss the case if it determines the action "(i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). Magistrate Judge James entered

cause order which ordered Plaintiff to show cause why this case should not be dismissed on res judicata or collateral estoppel grounds

a. This the identification of Grounds for dismissal if it was to come from the Court, Res Judicata or Collateral estoppel.

*The court notes initially that Plaintiff contends in his response that the doctrine of res judicata (or collateral estoppel) does not apply because the prior judgment was obtained by fraud. (Doc. 13 at 4–5.) Essentially, Plaintiff contends that the underlying state court judgment and orders were obtained by fraud due to alleged misconduct by Judge Burmaster. This court's ruling in Escalante II on issue preclusion, however, determined that Plaintiff was precluded from bringing another § 1983 claim against Judge Burmaster basedon the prior finding on judicial immunity in Escalante I. There is no basis to suggest that the decision in Escalante I was procured by fraud. See United Bus. Commc'ns, Inc. v. Racal-Milgo, Inc., 591 F. Supp. 1172, 1183 (D. Kan. 1984) (discussing that a fraudulently obtained judgment is not entitled to preclusive effect).*

*Therefore, the court may preclude Plaintiff from relitigating the issue of judicial immunity if the requisite elements are met.*

*The High Court Magistrate then stated, respectfully,*

*These elements have been met here. First, the complaints in all three cases allege that defendant violated Plaintiff's rights by issuing certain orders in the state custody case. Further, the issue of absolute judicial immunity was presented in both prior actions and was the basis for dismissal in Burmaster I 2 See Burmaster I, Docs. 31, 32; Burmaster II, Docs. 53, 54. While jurisdictional dismissals are generally not considered a ruling on the merits, the Tenth Circuit has held that such dismissals "preclude relitigation of the issues determined in ruling on the jurisdiction question." Jones v. U.S. Dep't of Just., 137 F. App'x 165, 168 (10th Cir. 2005) (quoting Park Lake Res., Ltd. Liab. Co. v. U.S.Dep't of Agric., 378 F.3d 1132, 1136 (10th Cir. 2004)). Thus, issue preclusion "prevents a party from relitigating a jurisdictional question when the party had a full and fair opportunity to litigate the matter in the prior case and the party is reasserting an identical jurisdictional claim." Cory v. Fahlstrom, 143 F. App'x 84, 87 (10th Cir. 2005). Therefore, there has been a final determination as to the jurisdictional issue in Burmaster I. Third, Plaintiff was obviously a party to all three cases. Finally, Plaintiff had a full and fair opportunity to litigate the question of absolute judicial immunity in Burmaster I and Burmaster II. In his response to the show cause order, Plaintiff argues that he did not have a full and fair opportunity to litigate the issues in the state court case. (Doc. 13 at 2.) That is not the question as to this element, however. It is whether he had a full and fair opportunity to litigate the question of judicial immunity in the prior case in this court. The court finds that he has based on the record.*

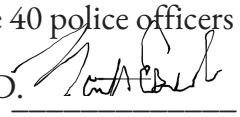
*Therefore, Plaintiff is barred from relitigating the question of judicial immunity and this action is therefore subject to dismissal as it is frivolous.*

b. The Plaintiff of this action against the family district court judge as Defendant, counter and factually based, presents facts of 2:23-CV02559 and Exhibit A, that was also included as case record in the proceeding before it was dismissed.

c. There is an exception to every statement that was made, respectfully by the High Court in Doc 15 and 16. And it pertains to Rule 19. Mandatory Joinder of Parties. There is claim in 2:23-CV02559 that is not identical to any presentation of it in this High Court in any prior proceeding of Burmaster I, or II. And this is Fact, that Exhibit A, contains Doc 26. Doc 26 is claimed as "barred" by this High Court. But Rule 19, says it can't be "barred". FRCP Rule 19, REQUIRED JOINDER OF PARTIES Section a) Persons Required to joined if Feasible. Feasible meaning it doesn't the burden the entirety or the functionality of this Particular Parties organization. And we do not need to burden the entire Gardner Police Department, but it is required that the Chief of Gardner Police and City Attorney Ryan Denk also be mandatory as joinder. And because Doc 26, the document not challenged of any fact presented of. And Doc 26 is not Alone, there's two of them. Doc 27 was given to the Johnson Co Sheriff, and they served that onto the Gardner Police Dept the same day, and it was replica of Plaintiff. That's what PFS law is under Chap 60, the defendant gets a copy and so does local precinct. Before it was presented singular to this High Court and the claim of its non-jurisdiction due to non-compliance of 18 USC 2265 FULL FAITH AND CREDIT GRANTED TO PROTECTION ORDERS was entirely affirmative and not contested. Doc 26 could not be argued that it is compliant with federal law of VAWA 18 USC 2265 because it does not comply. It lacks compliancy proof of ' 18 USC 2265. And this Court and every other court has held to the same conclusion upon years of caselaws that any protection issued in the United States after the VAWA ReAuthorization Act must be compliant with 18 USC 2265. Ok. So how do other states know if Doc 26 is compliant with 18 USC 2265 so they get credit to enforce a Kansas Order. They don't know if it was compliant if there no certificate or written VAWA text that states 'this order is compliant with 18USC2265, and even the DOJ has logs and guidebooks that says at the minimum writing that out as such would work, but Doc26 and Doc 27 don't have neither. so therefore it can't granted any faith nor credit acro the State Line of Missouri which is literally right down the road from even the Robert J Dole Courthouse. If Doc 26 had a VAWA certificate of compliance of 18 USC 2265, that's all it would to signal to Missouri LEO that Kansas held compliancy with federal VAWA, but there is not a VAWA and plaintiff has established that as Fact, and this court had an opportunity to contest that as non-fact, and it couldn't. The reason why Doc 26 cannot be precluded under any terms discussed in Doc 15 and Doc 16 by the Magistrate is because Doc 27 never got a chance to be litigated, and that is affirmative. VAWA insufficiency and non-enforceability cannot be precluded nor kicked of this under terms that bar it's re-entry, as is attempting to be done by this High Court, respectfully, is because the affirmative overlooked by all in this case, even the Plaintiff. And it was required to Joinder the Gardner Police Dept when litigating Doc 26 because Doc 27 is owned by the Police Dept and it cannot be argued that Doc 26, is not flawed upon issuance with no VAWA attached, as Gardner Police Chief Waldeck gives up the Statement to the Plaintiff that the Dept also saw a 'flaw' and also saw a "cure" applied on Oct 18, 2023 after I gave her the evidence transcripts and an ethics Grievance with the City. Chief Waldeck statements statements support that are now TWO orders Doc 26 and 27 that were flawed when issued and those orders had until October 19th to be 'cured' of 'flaw' as suggested by our Chief of Police in admissible statement. So we are gonna get this proceeding back in a Rule 60 action and Chief Waldeck must add testimony because my children and I's civil rights by non jurisdiction of Doc 26, so how many Gardner cops have civil rights being infringed by Burmasters negligent actions of ignoring that he just issued a void extended order of protection that deprives and threatens protected liberty of plaintiff but Defendant Burmaster is also trashing and stepping on the constitution right in front and on top of the GardnerPolice precinct, as the whole force now thinks they have to enforce. That's about 40 police officers with rights also infringed. So lets bring Defendant back please pursuant Rule60 Section (a)2 because there is no

Court available as it further factual that the Court who issued void doc 26 and doc 27 over the Plaintiff and the Police Dept has suspended Judge Paul W. Burmaster from the cases of civil custody and protection of Matthew Escalante because of obvious reasons that are going to have acknowledge now that Defendant Burmaster was engaged in Unlawful Conduct involving the Extended Protection Order Doc 26 and 27, especially the way he attempt to de-fraud the judiciary in Johnson and in this Suit in the High Court. Bring Defendant back here please, it was required under Rule 19 and I'm formally bringing that to attention of the federal judiciary in this filing Pursuant Rule 60 (B) (2) even though could still apply the best course of action would to just open and amend Rule 60 by Order of the Court to mandatory join the Other party and recipient of a void extended order of protection. This court is not gonna leave 40 cops under the expectation of fulfilling a void court order of doc 27, is it? No, that's inhumane. Don't do that to the GPD, please nor my children. Rule 19 falls outside of the Courts claims in Doc 15 and 16, and that is res judicate, collateral estoppel and in the subdivisions of the FRCP Rule 19 state that Joinder of GPD was mandatory for their relief. Frivolous does not apply here, there's nothing frivolous asking for police relief Doc 27 So 40 Police Officers who already serve and sacrifice too much in the line of Duty,and this Court is not going to leave a void order of Doc 27 over them that just causes problems for all and there is no jurisdiction on Doc 26 nor 27, and everyone here knows it. The County District Court Defendant Burmaster and Defendant Droege have intentionally avoided it to the point, that Exhibit A can be seen that Doc 28 has the merit to heard and hasn't been, was docketed well over 100 days ago. Violation of Kansas Supreme Court Rule 166. So surely this federal will make a better choice on the police officers behalf as they have hard work to do, & now they have to handle Burmaster void orders still and Burmaster is gone. Chief is ignoring it. Plaintiff recommends the prior mentioned course of Rule 60b to offer that Gardner Precinct the relief that is due of void order doc 26. Please because this case Waetzig v. Halliburton Energy Services, No. 22-1252 (10th Cir. 2023) and even United States Supreme court case No. 21-5726
In the Supreme Court of the United States both state Rule 60b is the limited action here that should be taken to offer the Gardner Police Department that relief that those officers from heavy workload and Burmaster just dumped a void order on them on Aug 10, 2023 in 22CV03391, or the High Court should Order down onto the Lower order to terminate Doc 26 and Doc 26, due to 18USC2265 visible insuffiency of VAWA compliancy please.

WHEREFORE, the Grounds for more favorable conditions to offer a police force is being held under Doc 27 and false merit of it by once presiding District Judge Defendant Burmaster and now he's gone off the proceedings and Chief judge pulled and Chief judge looked right at the docket and ignored it, even after doc 28 and doc 29 from the Plaintiff of Notice and motion to intervene were ignored. This high court must offer relief to the victim of Burmaster misconduct and KSA 21-5907 statute violation that he performed on Oct 18 2023 in case record evidence in 2:23-CV02559 in case 18-CV03813. Whoever views this motion, the focus should immediately come off of a pro se plaintiff and focus on the 40 police officers who are being victimized also with known Burmaster meritless deceptive order Doc 26
and 27. Please offer that relief to be appropriate to the GPD.



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CERTIFICATE OF COMPLIANCE

I hereby certify that the Motion For Relief of Judgement Pursuant Rule 60b was filed electronically, to offer the Gardner Police Dept the needed relief of suppression that void order doc 27 is producing that the GPD believes they must enforce, and no juris is held. They are owed relief on this matter. This was sent by CM/ECF transmission to all parties in proceedings by server of PACER on 2/21/24

**Case** 22CV03391 **Caption** ESCALANTE vs. ESCALANTE

**Chapter** 60D **Nature** PROTECTION FROM STALKING

**Status** TERMINATED **Judge** OUT OF COUNTY JUDGE

**Division** OC

EXHIBIT A



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|---|---|---|
| 11/16/2023 | <******* Bench Notes *********><br>BY ORDER OF THE CHIEF JUDGE THIS CASE IS TRANSFERRED TO AN OUT OF COUNTY JUDGE FOR THE PURPOSE OF DOCKET AND CASELOAD MANAGEMENT(JUDGE: DROEGE) | |
| 11/16/2023 | Judge OUT OF COUNTY JUDGE assigned to case | |
| 10/18/2023 | FILE STAMP 10/18/23, NOTICE TO THE COURT | DOC(30) |
| 10/16/2023 | FILE STAMP 10/13/2023, MOTION TO INTERVENE | DOC(29) |
| 10/16/2023 | FILE STAMP 10/13/2023, MOTION TO MODIFY PROTECTION FROM STALKING, SEXUAL ASSAULT, OR HUMAN TRAFFICKING ORDER | DOC(28) |
| 08/10/2023 | <******* Bench Notes *********><br>PETITIONER APPEARS WITH COUNSEL, C. WILSON IN PERSON. DEFENDANT APPEARS PRO SE IN PERSON. AT ISSUE, MOTON TO EXTEND PFS 3 YEARS. COURT HEARS ARGUMENT AND REVIEWS ADMITTED EVIDENCE. COURT FINDS BASIS TO EXTEND. GOOD CAUSE SHWON. PFS EXTENDED 3 YEARS. DEFENDANT SERVED. DEFENDANT MAY NOT EMAIL PETITIONER'S COUNSEL UNLESS TO SEND A PLEADING. ALL OTHER CORRESPONDENCE TO BE BY MAIL. DEFENDANT MADE A REQUEST PURSUANT TO KSA 77-525. THAT STATUTE APPLIES TO ADMINISTRATIVE PROCEDURES AND NOT THE JUDICIAL BRANCH PER 77-502(A).(RPTR: RECORDING)(JUDGE: BURMASTER) | |
| 08/10/2023 | FILE STAMP 08/10/2023, SHERIFF RETURN JO CO KS, FINAL PROTECTION STALKING ORDER SERVED CONFIDENTIAL | DOC(27) |